

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA**

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DISTRICT OF SOUTH CAROLINA

2015 JAN 16 P 3:59

Gary Scott, ## 282106,	)	
	)	No. 6:14-cv-4175-RMG
Plaintiff,,	)	
	)	<b>ORDER</b>
vs.	)	
	)	
South Carolina Department of Corrections,	)	
Dr. Lee, urologist at Tuomey Medical	)	
Center, and Dr. Zubel, urologist at	)	
Tuomey Medical Center,	)	
	)	
Defendants.	)	
	)	

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This matter comes before the Court on the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 10), recommending that Defendant’s action be summarily dismissed without prejudice and without service of process because the Complaint fails to state a cause of action for deliberate indifference to a serious medical need under the Eighth Amendment of the United States Constitution. The Magistrate Judge recommends the dismissal of any state causes of action for alleged medical malpractice because there is not complete diversity among between the parties. (*Id.* at 6). Plaintiff has filed objections to the R & R, arguing that he has pled sufficient facts to state a claim of deliberate indifference. (Dkt. No. 18).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court is charged with making a de novo determination of those portions of the R & R to which objection is made. *Diamond v. Colonial Life & Acc. Ins. Co.*,

416 F.3d 310, 315 (4th Cir. 2005) (quoting 28 U.S.C. § 636(b)(1)); *accord* Fed. R. Civ. P. 72(b).

The Court has reviewed the Complaint in this matter, the R & R and the Plaintiff's objections. The Court concurs in the findings and conclusions of the Magistrate Judge that Plaintiff's claims, as alleged, involve a dispute with the course of therapy adopted by the treating physicians and there is not sufficient evidence pled to support a claim of deliberate indifference to a serious medical need of the Plaintiff. Therefore, the Court **ADOPTS** in full the Magistrate Judge's Report and Recommendation (Dkt. No. 10) as the order of this Court. Accordingly, Petitioner's action is **DISMISSED** without prejudice.

**IT IS SO ORDERED.**

  
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Richard Mark Gergel  
United States District Judge

January 16, 2015  
Charleston, South Carolina